

**SETTLEMENT AGREEMENT AND RELEASE**

WHEREAS Metropolitan Mortgage & Securities Company, Inc. (“Metropolitan”) and Summit Securities, Inc. (“Summit”) are affiliated corporations that were engaged, in part, in the marketing and sales of their securities through a subsidiary of Summit, Metropolitan Investment Securities, Inc. (“MIS”); and

WHEREAS Metropolitan sold, among other securities, Investment Debentures, Series III and III-A, pursuant to a registration statement declared effective by the Securities and Exchange Commission (“SEC”) on April 29, 2002, and sold Preferred Stock, Series E-7, pursuant to a registration statement declared effective by the SEC on August 13, 2002, and Summit sold, among other securities, Investment Certificates, Series B and B-1, pursuant to a registration statement declared effective by the SEC on February 13, 2002 (collectively, the “Relevant Securities”); and

WHEREAS Ernst & Young LLP (“EY”) was engaged as an independent auditor for Metropolitan and Summit and offered an audit opinion on Metropolitan’s and Summit’s FY 2001 and FY 2002 financial statements; and

WHEREAS Metropolitan and Summit, along with MIS, filed for bankruptcy protection on or about February 4, 2004; and

WHEREAS Plaintiffs Venus (“Vee”) Hafford Webber, Eva Draughn, through the representative of her estate, Beverly Bizzell, Becklynn Wilkey, Floyd Bodner, Steven and Linda Peterson, and Robert Legard (collectively, “Lead Plaintiffs” or “Class Representatives”) have filed a Consolidated and Fourth Amended Class Action Complaint for violations of the Securities Act of 1933 against Roth Capital Partners, LLC, EY, PricewaterhouseCoopers LLP and certain former officers and directors of Metropolitan and Summit captioned *In re*

*Metropolitan Securities Litigation*, No. CV-04-025-FVS (the "Action"), pending in the United States District Court for the Eastern District of Washington (the "Court"); and

WHEREAS EY denies that it committed any acts or omissions, or engaged in any wrongdoing, giving rise to any liability and/or violation of law, and has denied the allegations in the Action and asserted numerous defenses to the Action; and

WHEREAS on November 25, 2008, the Court issued an Order certifying a Federal Claims Class of persons who purchased the Relevant Securities and certain other securities and appointed Lead Plaintiffs as Class Representatives; and

WHEREAS on March 16, 2009, the Court issued an Order amending the definition of the Class; and

WHEREAS the Class and EY participated in mediation before The Hon. Layn Phillips (Retired); and

WHEREAS the Class and EY (collectively, the "Settling Parties") wish to avoid the ongoing expense, risk and uncertainty involved in continued litigation over the matters that have been or could have been alleged by the Class in the Action and instead wish to compromise and settle all claims that have been or could have been made by the Class against EY.

NOW, THEREFORE, the Settling Parties memorialize the terms of a binding settlement (the "Settlement") through the execution of this Settlement Agreement.

#### I. DEFINITIONS

In addition to the capitalized terms defined above and at other places in this Settlement Agreement, the capitalized terms below shall have the following meanings:

A. Bifurcation Order. "*Bifurcation Order*" means the order bifurcating the Class's claims against EY, which shall be substantially in the form attached hereto as Exhibit B. The bifurcated action shall be referred to as the "EY Action."

B. Class. “*Class*” means the class certified by the Court’s Order dated March 16, 2009, as follows: “All persons who purchased investment debentures or preferred stock issued by Metropolitan Mortgage & Securities Company, Inc. (“Metropolitan”) or investment certificates by Summit Securities, Inc. pursuant to registration statements that became or were effective during the period from February 13, 2001 through July 31, 2003 (the “Class Period”), except that the Class does not include persons whose only purchases were of Metropolitan Series E-7 Preferred Stock on a secondary market, including on the American Stock Exchange or the internal trading desk at Metropolitan Investment Securities, Inc.” Persons or entities who or which elected to exclude themselves from the Class shall not be included in this Settlement.

C. Class Counsel. “*Class Counsel*” means the law firms of Gordon Thomas Honeywell LLP, and Hagens Berman Sobol Shapiro LLP.

D. Class Member. “*Class Member*” means any person or entity who or which is a member of the Class and not excluded therefrom.

E. Effective Date. “*Effective Date*” means ten (10) days following the date on which all of the following have occurred:

- a) the Court enters an order substantially in the form of Exhibit A hereto (Preliminary Approval Order);
- b) the Court enters an order substantially in the form of Exhibit B hereto (Bifurcation Order);
- c) the Court enters a final judgment substantially in the form of Exhibit C hereto (the “Judgment” as defined in Section I(H), below); and
- d) the Court’s Judgment becomes Final, as defined below.

F. Escrow Agent. "*Escrow Agent*" means the financial institution chosen by Class Counsel to receive, hold, invest and disburse the Settlement Amount pursuant to this Settlement Agreement, any escrow agreement between Class Counsel and the Escrow Agent, and/or Court order.

G. Final. "*Final*," with respect to the Judgment, means the later of: (1) if there is no appeal from the Judgment, the expiration of the time for filing or noticing an appeal; or (2) if there is an appeal from the Judgment, the date of final affirmance on appeal and the expiration of any time for further judicial review whether by appeal, reconsideration or a petition for writ of certiorari and, if certiorari is granted, the date of final affirmance of the Judgment following review pursuant to the grant. Any proceeding or order, or any appeal or petition for a writ of certiorari, pertaining solely to any plan of allocation and/or application for attorneys' fees and expenses, shall not in any way delay or preclude the Judgment from becoming Final.

H. Judgment. "*Judgment*" means the Judgment to be entered finally approving the Settlement and dismissing the Action and the EY Action with prejudice, which shall be substantially in the form attached hereto as Exhibit C.

I. Preliminary Approval. "*Preliminary Approval*" means the order preliminarily approving the Settlement, which shall be substantially in the form attached hereto as Exhibit A.

J. EY. "*EY*" means Ernst & Young LLP and its past, present and future predecessors, successors, officers, directors, partners, members, employees, agents, attorneys, accountants, insurers, advisors, representatives, affiliated persons and entities, and all persons and entities acting for or on its or their behalf.

## II. SETTLEMENT CONSIDERATION

In full and complete settlement of the claims asserted in the Action against EY and in consideration of the releases set forth in Section IV below, EY shall cause the amount of

fourteen million and two hundred fifty thousand dollars (\$14,250,000) (the “Settlement Amount”) to be paid into an interest-bearing account (the “Escrow Account”), within ten (10) business days following the date the Court enters an order substantially in the form of Exhibit A hereto (Preliminary Approval Order).

### III. THE SETTLEMENT FUND

A. The Settlement Amount and all interest accrued thereon are the “Settlement Fund.” The Settlement Fund created under this Settlement Agreement shall be established and maintained as a Qualified Settlement Account in accordance with Section 468B of the Internal Revenue Code, as amended (the “Code”), and the Treasury Regulations promulgated thereunder. The Settling Parties agree to negotiate in good faith, subject to court approval, any changes to this Settlement Agreement necessary to obtain IRS approval of the Settlement Fund as a Qualified Settlement Account.

B. Class Counsel, or its designated Escrow Agent, is appointed to be the “administrator” of the Settlement Fund within the meaning of Treasury Regulation Section 1.468B-2(k)(3). As such, Class Counsel or its designated Escrow Agent will comply with the duties and obligations applicable to the administrator under the Treasury Regulations promulgated under Code Section 468B, including, but not limited to, the following: (i) obtaining a tax identification number for the Settlement Fund; (ii) preparing and timely filing, or causing to be prepared and timely filed, all tax returns the Settlement Fund is required to file under federal or state law; (iii) paying from the Settlement Fund all taxes, including penalties, interest and additions to tax, that are imposed upon the Settlement Fund by federal or state law; (iv) complying with applicable federal or state information reporting or withholding requirements; and (v) filing, or causing to be filed, tax elections available to the Settlement Fund, including a request for a prompt assessment of tax under Code Section 6501(d) if and when

Class Counsel deems it appropriate to do so. If at any time it is determined that the Settlement Fund does not qualify as a Qualified Settlement Account under Code Section 468B, Class Counsel shall promptly seek refunds of all taxes paid by the Settlement Fund. Class Counsel shall pay to the Settlement Fund all such refunds received, together with interest actually received from all taxing authorities.

C. All (i) taxes (including any interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon EY with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a qualified settlement account or fund for federal or state income-tax purposes ("Taxes"), and (ii) expenses and costs incurred in connection with the implementation of this Section (including, without limitation, expenses of a tax attorney or consultant and mailing and distribution costs and expenses relating to filing or failing to file the returns described in this Section ("Tax Expenses")), shall be paid out of the Settlement Fund (except to the extent theretofore paid from the Settlement Fund); in all events, EY shall have no liability or responsibility for Taxes or Tax Expenses. The Class shall be solely responsible for Taxes and Tax Expenses. Further, Taxes and Tax Expenses shall be timely paid by Class Counsel out of the Settlement Fund without need for an additional or prior order from the Court, and Class Counsel shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to the Class any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treasury Regulation Section 1.468(B)-2(I)(2)); neither EY nor its counsel shall have any liability or responsibility for such payment or withholding. The Class, as appropriate, is permitted to retain the services of a tax attorney, accountant or

consultant to the extent reasonably necessary to carry out the provisions of this Section. Class Counsel, the Class and EY agree to cooperate with each other and any tax attorneys, accountants or consultants of the Class to the extent reasonably necessary to carry out the provisions of this Section.

D. All costs and expenses associated with administering the Settlement and providing notice of the Settlement to the Class (the "Notice and Administration Expenses"), including, but not limited to, the costs and expenses of a claims administrator, identifying Class Members, preparing, printing and mailing notice and proofs of claim, providing notice by publication or other means as ordered by the Court, processing claims, communicating with Class Members, and implementing any plan of allocation, shall be paid or reimbursed from the Settlement Fund. EY shall have no liability for the payment of any Notice and Administration Expenses.

#### IV. RELEASES

A. **Release By The Class.** Upon occurrence of the Effective Date, Lead Plaintiffs and each Class Member, on behalf of themselves and each of their respective past, present and future predecessors, successors, parents, subsidiaries, affiliates, employees, agents, attorneys, accountants, insurers, advisors, representatives, assigns, heirs, executors, trustees, administrators, and custodians, and any person or entity acting on their behalf (collectively, the "Class Releasers"), by operation of the Judgment, will fully, finally and unconditionally release and forever discharge EY and its past, present and future predecessors, successors, officers, directors, partners, members, employees, agents, attorneys, accountants, insurers, advisors, representatives, affiliated persons or entities, and all persons and entities acting for or on its or their behalf (collectively, the "EY Released Parties") from any and all demands, claims, causes of action, rights, duties and liabilities, of every nature and description whatsoever, including both known

claims and Unknown Claims, whether suspected or unsuspected, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, that have been, or could have been, asserted by Lead Plaintiffs and the Class, or their agents, representatives, successors or assigns, in the Action or the EY Action or any other proceeding or forum, arising out of or relating to: (a) the facts, transactions, events, occurrences, acts, failures to act, statements, omissions or disclosures alleged in the Action; (b) the purchase or other acquisition of, or sale or other disposition of, any securities (or interests therein) (whether on the open market or otherwise) issued by Metropolitan or Summit or any of their subsidiaries or affiliates, for which EY served as an independent auditor or provided any other service, including, but not limited to, the Relevant Securities; (c) the statements contained in the registration statements (including all documents incorporated by reference therein), prospectuses and offering materials for all such securities; and (d) the administration of the Settlement Fund (collectively, the “EY Released Claims”). Upon occurrence of the Effective Date, the Class Releasers shall be forever barred and enjoined from commencing, instituting, or maintaining any of the EY Released Claims against the EY Released Parties.

B. **Release By EY.** Upon occurrence of the Effective Date, by operation of the Judgment, EY will release Lead Plaintiffs and Class Counsel (collectively, the “Plaintiff Released Parties”) from any and all claims, demands, causes of action, actions, rights, liabilities, contract obligations, damages, attorneys’ fees, costs, torts, suits, debts, sums of money, accountings, reckonings, bills, covenants, controversies, agreements, promises whatsoever, at law or in equity or otherwise, direct or indirect, known or unknown, which EY now owns or holds, or has at any time heretofore owned or held, or may in the future own or hold, against the persons and entities they are releasing or any of them, in any capacity, that have been, or could

have been, asserted by EY based upon, arising out of, or relating to the institution or prosecution of the Action (collectively, the "Plaintiff Released Claims").

C. **No Other Beneficiaries.** Notwithstanding any other provision of this Section that could be construed to the contrary, nothing herein shall be construed to release or waive any claims the Class Releasors may have against any individuals or entities other than the EY Released Parties, nor any claims the EY Released Parties may have against any individuals or entities other than Lead Plaintiffs and Class Counsel.

D. **Unknown Claims Released.** With respect to the releases specified in Sections IV(A) and (B) above, and except as specifically set forth above, the Settling Parties hereby waive any and all rights that they may have against each other under or pursuant to (i) the provisions of Section 1542 of the Civil Code of the State of California, and/or (ii) the provisions of any other similar statutory, regulatory or common law of any state, or of the United States. Section 1542 of the Civil Code of the State of California provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The parties understand fully the statutory language of Section 1542 of the Civil Code of the State of California and, having been so apprised, nevertheless release all unknown claims ("Unknown Claims") as provided in Sections IV(A) and (B) above.

#### V. **PRELIMINARY APPROVAL AND BIFURCATION**

A. Promptly after execution of this Settlement Agreement, the Class shall move for entry of Preliminary Approval and the Bifurcation Order, on an expedited basis. The Settling Parties agree that bifurcation of all claims that have been asserted or could have been asserted by the Class and/or non-settling defendants against EY in the Action, is an express condition to the

Settlement and Settlement Agreement. The Settling Parties further agree that, in the event the Court declines to enter Preliminary Approval or the Bifurcation Order in any material respect, or declines to enter orders materially similar to the Preliminary Approval Order or Bifurcation Order on or before June 1, 2010, the Class and EY each shall have the right to terminate the Settlement and Settlement Agreement pursuant to Section VIII.

B. The Settling Parties do not anticipate seeking an order approving and directing notice of the Settlement to the Class and setting a final approval hearing, until the earlier of (i) final resolution of the Class's claims against the non-settling defendants in the Action, or (ii) June 15, 2010 or such continued date as the Settling Parties may agree to in writing. At such time, the Settling Parties shall seek approval by the Court of notice of the Settlement to the Class, in a form and manner that is acceptable to EY.

C. The Settling Parties agree that in the event the Action proceeds to trial as to any non-settling defendant(s), any verdict or judgment that may be obtained by or on behalf of the Class against the non-settling defendant(s) in which any fault or responsibility is attributed to EY shall not affect the validity or enforceability of the Settlement or Settlement Agreement in any way. Any such verdict, judgment or allocation shall not be used by either the Class or EY to terminate and/or modify the Settlement Agreement or disturb Preliminary Approval, the Bifurcation Order or the Judgment.

D. The Settling Parties further agree that in the event the Action proceeds to trial as to any non-settling defendant(s): (i) the Class may not use any finding, ruling, order, trial testimony, verdict or judgment or any attribution of fault or responsibility to EY, for any purpose whatsoever against EY in the Action or in any other proceeding or forum, or for any other purpose; (ii) any finding, ruling, order, trial testimony, verdict or judgment or any attribution of

fault or responsibility to EY, shall not be admissible for any purpose whatsoever as against EY in the Action or in any other proceeding or forum, or for any other purpose; (iii) any finding, ruling, order, trial testimony, verdict or judgment or any attribution of fault or responsibility to EY, shall not constitute collateral estoppel or res judicata as to EY in the Action or the EY Action or in any other proceeding or forum; (iv) EY shall not be estopped from challenging liability in the Action or the EY Action or any other proceeding or forum as if no settlement had been negotiated or entered into; (v) EY shall not use any finding, ruling, order, trial testimony, verdict or judgment for any purpose whatsoever against the Class in the Action or the EY Action or against the Class in any other proceeding or forum, or for any other purpose; (vi) any finding, ruling, order, trial testimony, attribution of fault or responsibility to any other defendant, verdict or judgment shall not be admissible for any purpose against the Class in the Action or the EY Action or against the Class in any other proceeding or forum in any litigation between EY and the Class; (vii) any finding, ruling, order, trial testimony, attribution of fault or responsibility to any other defendant, verdict or judgment shall not constitute collateral estoppel or res judicata as to the Class in the Action or the EY Action or against the Class in any other proceeding or forum in any litigation between EY and the Class; and (viii) the Class shall not be estopped from asserting the liability of EY in the Action or the EY Action or any other proceeding or forum as if no settlement had been negotiated or entered into.

## **VI. FINAL APPROVAL AND JUDGMENT**

A. Upon final approval of the Settlement by the Court, the Judgment shall be entered by the Court. The Judgment shall include findings and a determination that the Settlement is fair, just, reasonable and adequate, and is being entered into in good faith after arms-length negotiations by the Settling Parties, and that the EY Released Parties are entitled to the full

protection of Revised Code of Washington 4.22.060, California Code of Civil Procedure Sections 877 and 877b and any comparable statute of any other state.

B. The Judgment, substantially in the form of Exhibit C hereto, shall contain a provision that permanently bars, enjoins and restrains any person or entity from asserting, commencing or prosecuting any claim for contribution or indemnification against the EY Released Parties (or any other claim against the EY Released Parties where the claimant's injury is based upon, arises from or is related to the claimant's liability to the Class) arising out of or relating to the claims or allegations asserted by the Class in the Action, whether arising under federal, state, foreign or common law as claims, cross-claims, counterclaims, or third-party claims, whether asserted in the Action, the EY Action, in this Court, in any federal or state court, or in any other proceeding or forum. It is the intention of the Settling Parties that this Settlement shall discharge the EY Released Parties from all liability to any third parties or non-parties for contribution or indemnification (or any other claim against the EY Released Parties where the claimant's injury is based upon or related to the claimant's liability to the Class) that arises out of or relates to the EY Released Claims, to the fullest extent permitted by law.

C. The Judgment also shall provide that the judgment reduction requirements applicable under Ninth Circuit law shall apply to any final verdict or judgment that may be obtained by or on behalf of the Class against a non-settling defendant in which any fault or responsibility is attributed to EY.

#### **VII. PLAN OF ALLOCATION**

The Settling Parties agree that Lead Plaintiffs and Class Counsel will submit to the Court at a later date, and upon notice to the Class, a plan of allocation for distribution of monies from the Settlement Fund to claimants in a manner consistent with this Settlement Agreement, and as approved by the Court. The plan of allocation is not a necessary term to the Settlement

Agreement, and any decision by the Court or an appellate court concerning the plan of allocation shall not entitle the Class or EY to terminate and/or modify the Settlement Agreement and shall not affect the validity or finality of the Settlement or Settlement Agreement provided that the plan of allocation provides EY the full benefit of the releases provided in Sections IV(A) and (B) above. EY shall have no responsibility or liability for allocation of the Settlement Fund.

#### VIII. TERMINATION

A. The Class and EY each shall have the right to terminate the Settlement and Settlement Agreement but only by providing written notice of their election to do so to the other party within five (5) days following: (i) the Court declining to enter Preliminary Approval in any material respect or declining to enter an order materially similar to the Preliminary Approval Order on or before June 1, 2010; (ii) the Court declining to enter the Bifurcation Order in any material respect or declining to enter an order materially similar to the Bifurcation Order on or before June 1, 2010; (iii) the Court refusing to finally approve the Settlement Agreement or any material part of it; (iv) the Court declining to enter the Judgment in any material respect; (v) the Court declining to enter a Judgment or Order consistent with Sections VI(B) and (C) above; (vi) the date upon which the Judgment is modified or reversed in any material respect upon appeal or review; or (vii) in the event the Court enters a judgment other than the Judgment and none of the Settling Parties elects to terminate the Settlement, the date upon which such judgment is modified or reversed in any material respect on appeal or review.

B. Except as otherwise provided herein, with the exception of the Bifurcation Order, in the event the Settlement is terminated or fails to become effective for any reason: (i) the Settlement shall be without prejudice and none of its terms shall be effective or enforceable; (ii) the Settling Parties shall be deemed to have reverted to their respective status in the Action and the EY Action as of February 7, 2010; and (iii) the Settling Parties shall proceed in all

respects as if this Settlement Agreement and any related orders had not been entered. In such event, the fact and terms of the Settlement Agreement shall not be admissible in any trial of this Action or the EY Action or any other proceeding or forum.

**IX. LIMITED MUTUAL COOPERATION**

A. As partial consideration for this Settlement, EY and its counsel shall reasonably cooperate with Class Counsel, each at their own expense, solely to obtain final approval of the Settlement, and to make EY witness Jack Behrens available for attendance at trial, including acceptance of a trial subpoena for Mr. Behrens.

B. As further partial consideration for this Settlement, EY withdrew its pending motion for reconsideration of the summary judgment ruling, dated January 29, 2010. The Class agrees that EY may refile its motion if this Settlement is not approved by the Court for any reason.

**X. REQUEST FOR AWARD OF ATTORNEYS' FEES AND EXPENSES**

A. Class Counsel intend to submit an application (the "Fee and Expense Application") for distributions to them from the Settlement Fund for: (i) an award of attorneys' fees; plus (ii) reimbursement of expenses incurred in connection with prosecuting the Action, including the fees and expenses of any experts or consultants; plus (iii) interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid), as may be awarded by the Court ("Attorneys' Fees and Expenses"). Class Counsel reserve the right to make additional applications for fees and expenses incurred. EY takes no position as to any Fee and Expense Application, and has no responsibility or liability for the allocation of Attorneys' Fees and Expenses.

B. Attorneys' Fees and Expenses awarded to Class Counsel may, with court approval, be paid to Class Counsel from the Settlement Fund immediately upon award,

notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement, subject to the obligation of Class Counsel to refund or repay any Attorneys' Fees and Expenses to the Settlement Fund plus accrued interest at the rate paid on the Settlement Account by the financial institution holding it, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack or otherwise, the final approval of the Settlement or the fee or expense award is finally denied, reduced or reversed. Each Class Counsel, as a condition of receiving such Attorneys' Fees and Expenses, on behalf of itself, agrees that it is subject to the jurisdiction of the Court for the purpose of enforcing this Section.

C. Lead Plaintiffs and Class Counsel may not cancel or terminate this Settlement Agreement based on the Court's or any appellate court's ruling with respect to any Fee and Expense Application or other fee or expense award in this Action.

D. The procedure for, and the allowance or disallowance by, the Court of any Fee and Expense Application are not part of this Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Settlement, or affect or delay the finality of the Judgment approving the Settlement set forth herein.

E. Unless the Court orders otherwise, all Attorneys' Fees and Expenses (including experts' fees and expenses) awarded by the Court to Class Counsel may be paid to Class Counsel out of the Settlement Fund, promptly after entry of the Judgment and the Judgment becoming Final. Distribution of such Attorneys' Fees and Expenses among Class Counsel shall be at the

sole discretion of Class Counsel in accordance with the work performed by Class Counsel and the benefit provided to the Class. EY has no responsibility or liability for the distribution of Attorneys' Fees and Expenses.

## XI. MISCELLANEOUS

A. **No Admission By EY.** EY believes that the Action has no merit but has entered into this Settlement Agreement solely for the purpose of avoiding the expense, risk and uncertainty of litigation. Entering into, or carrying out, the Settlement Agreement (or exhibits hereto) and any negotiations or proceedings related thereto shall not be construed as, or be deemed to be, evidence of an admission or a concession by EY that it has any liability, fault or responsibility for any of the damages or liabilities that the Class claims, and shall not be offered or received in evidence in any action or proceeding in any court, administrative agency or other tribunal for any purpose whatsoever, other than to enforce the provisions of the Settlement Agreement and exhibits hereto.

B. **No Admission By The Class.** Lead Plaintiffs and Class Counsel believe that the Action has merit but have entered into this Settlement Agreement because they believe it is in the best interests of the Class. Entering into, or carrying out, the Settlement Agreement (or exhibits hereto) and any negotiations or proceedings related thereto shall not be construed as, or be deemed to be, evidence of an admission or a concession by Lead Plaintiffs or the Class with regard to the merits of their claims and shall not be offered or received in evidence in any action or proceeding in any court, administrative agency or other tribunal for any purpose whatsoever, other than to enforce the provisions of the Settlement Agreement and exhibits hereto.

C. **Settlement Communications.** Any pleadings submitted or statements made in furtherance of the Settlement reflected in this Settlement Agreement by the parties hereto are settlement communications subject to Federal Rule of Evidence 408 and Washington Evidence

Rule 408. In the event final approval of the Settlement Agreement cannot be achieved, the Settling Parties agree that nothing contained in the Settlement Agreement, any subsequent writings intended to implement the Settlement Agreement, or any pleadings or oral or written statements submitted or made by the Settling Parties in negotiations regarding, pursuant to, or in furtherance of the Settlement Agreement, may be used, quoted, referenced, or admitted in any litigation or proceeding that is unrelated to the consummation or approval of the Settlement Agreement.

D. **Exhibits.** All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

E. **Headings.** The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

F. **Amendment.** This Settlement Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all parties hereto or their successors in interest.

G. **Integration.** This Settlement Agreement and its exhibits constitute the entire agreement among the parties hereto concerning Settlement of the Action and supersede all prior agreements, written or oral, among the parties hereto. No representations, warranties or inducements have been made to any party hereto concerning the Settlement Agreement or its exhibits other than those contained and memorialized in such documents.

H. **Dispute Resolution.** If any dispute arises out of finalization of the Settlement or of the Settlement itself, such disputes are to be resolved by Judge Layn R. Phillips (Retired) first by way of mediation, and if mediation is unsuccessful then by way of final binding, non-appealable arbitration. If for any reason Judge Phillips is unavailable or has a conflict, the

parties will agree on an alternate neutral mediator so that this clause may be enforced without resort to the Court. If the parties cannot agree upon a substitute neutral mediator, they will jointly petition Judge Phillips to select a neutral mediator to assist them in resolving any dispute arising out of this clause and to enforce this clause.

H. **Jurisdiction.** Without affecting the finality of the Judgment entered in accordance with this Settlement Agreement, the Court shall retain continuing and exclusive jurisdiction over the Settling Parties, including all Class Members, and over the matters set forth in the Settlement Agreement, including the administration and enforcement of the Settlement Agreement. Any disputes or controversies arising with respect to the interpretation, enforcement, or implementation of the Settlement must be resolved by motion to the Court.

I. **Governing Law.** The construction, interpretation, operation, effect and validity of this Settlement Agreement and its exhibits, and all documents necessary to effectuate them, shall be governed by the internal laws of the State of Washington without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

J. **Counterparts.** The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the parties hereto shall exchange among themselves original signed counterparts.

K. **Authority.** Class Counsel and counsel for EY represent that they are authorized to sign this Settlement Agreement on behalf of their respective clients. All counsel must sign the Settlement Agreement before it is effective.

L. **Implementation.** The Settling Parties reserve the right, upon written agreement of all of them and subject to the Court's approval, to make any reasonable extensions of time, or

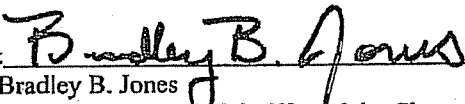
modifications to the exhibits, that may be necessary to carry out any of the provisions of this Settlement Agreement.

M. Construction. None of the parties hereto shall be considered the drafter of this Settlement Agreement for the purpose of any statute, case law or rule of construction that would or might cause any provision to be construed against the drafter.

N. Costs. Except as otherwise provided herein, the Class and EY each shall bear their own costs incurred in connection with the drafting and performance of their obligations under the Settlement Agreement.

DATED as of this \_\_\_\_ day of February 2010.

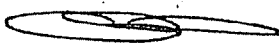
GORDON THOMAS HONEYWELL LLP

By:   
Bradley B. Jones  
Attorneys for Lead Plaintiffs and the Class

HAGENS BERMAN SOBOL SHAPIRO LLP

By: \_\_\_\_\_  
Tyler S. Weaver  
Attorneys for Lead Plaintiffs and the Class

BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP

By:   
Chris Lind  
Attorneys for Ernst & Young LLP

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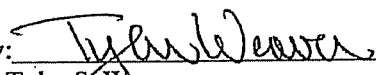
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DATED as of this \_\_\_ day of February 2010.

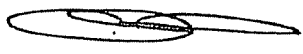
GORDON THOMAS HONEYWELL LLP

By: \_\_\_\_\_  
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